

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES
STATE OF MONTANA**

**In the Matter of the Complaint
Against InFocus**

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**SUMMARY OF FACTS,
and
STATEMENT OF FINDINGS**

On June 2, 2008, Deb Essen filed a complaint against InFocus, Inc, an advertising agency in Hamilton, MT, (InFocus), claiming InFocus violated Montana Campaign Finance and Practices Law. InFocus, via its officers Chris Daniel and Amy Arnold responded to the complaint on June 17, 2008.

SUMMARY OF FACTS

InFocus, Inc. was an advertising agency in Ravalli County, Montana, at the time of the complaint and the alleged infractions.

InFocus Inc. was incorporated with the Montana Secretary of State on January 24, 2008. The registered agent listed was Jennifer Lint (Lint) of Hamilton, Montana, an attorney with the Boatwright Law Office in Hamilton. Lint stated her sole involvement with InFocus was to assist in the entity registration.

Ms. Essen alleges InFocus placed numerous ads in the Ravalli Republic newspaper attempting to influence voters to vote against zoning issues in Darby. Essen's complaint alleges that InFocus was operating as a political committee, but had not registered or reported to this office, and therefore violated §§ 13-37-201, 13-37-210, 13-35-227, and 13-35-218, MCA.

Ms. Essen's Complaint also states there were numerous signs in the Darby area encouraging voters to vote against participation in countywide zoning, which did not include a disclaimer. Ms. Essen believes InFocus may have involvement with such signs. Essen alleges InFocus violated §13-35-225, MCA, by not placing attribution language on various anonymous signs placed around the Darby area.

Finally, the complaint alleges a violation of §13-27-409, MCA.

InFocus, via its officers Chris Daniel and Amy Arnold responded to the complaint. Chris Daniel and Amy Arnold operated InFocus as a public relations firm.

InFocus admitted publishing two ads advocating that voters "stop zoning" on the Darby straw ballot, it claims the ads were intended as opinion pieces, not a voter directive.

InFocus' response included a statement that it was not aware it had crossed a line advocating the defeat of the straw poll and its actions were not intentional.

The Commissioner of Political Practices Office conducted an investigation into the allegations of the Complaint and the response of InFocus.

In 2001 and 2002 Ravalli County prepared a county growth policy. The Planning Board recommended adoption of the growth policy and on December 31, 2002, the County Commission amended the growth policy. On June 3, 2008, the town of Darby, Montana, held a ballot issue advisory vote for the Darby School District asking voters if they wanted the county to continue its consideration of baseline zoning in the School District. In June 2008, the Ravalli County Clerk and Recorder approved a petition placing a referendum on the November 4, 2008, ballot to repeal the growth policy. The effect of the referendum, if approved by the voters, would be to end work on projects authorized under the approved growth policy, including drafting of general zoning and streamside setback regulations.

In early 2008 InFocus contacted construction and land development companies to ascertain who might be in need of their services.

In January of 2008 InFocus successfully secured six land development and construction companies to represent. Those clients had an immediate need to expedite projects through the county approval process and asked InFocus to contact the Ravalli County Commissioners to explain their projects with the idea of securing approval for business interests.

InFocus believed several Ravalli County Commissioners were not in favor of approving the developments of their clients. Accordingly, their clients asked InFocus to run advertisements in the local newspaper with the idea of swaying public opinion in their favor and changing the opinions of the commissioners regarding their projects. This request was not related to any pending or anticipated ballot issue, but rather to publicize their difficulties dealing with the county commissioners.

At some point after InFocus began publishing advertisements, the Ravalli County Commissioners authorized a straw poll for the Darby area to determine if the people in south valley wanted to opt out of the County's Growth Policy.

In an effort to determine whether clients paid InFocus to address the zoning issue, five of InFocus' six clients, (one client had moved out-of-state) were interviewed by the investigator for this agency. Each confirmed they paid money to InFocus for public relations work; did not advise or direct InFocus with regard to advertisements placed on their behalf, did not request advertising for or against the zoning issue; and were not aware of the "stop zoning" ads until they saw the ads in the newspaper. Moreover, the clients did not make a contribution or

expenditure in connection with InFocus as a political committee. A review of financial statements of InFocus confirms there were no corporate contributions.

In response to a Subpoena for Production of Documents issued by this office, the Ravalli Republic newspaper provided copies of ads placed by InFocus, as well as all relevant billing documents. InFocus published 14 ads in the Ravalli Republic newspaper between February 5, 2008, and June 6, 2008.

From February 5, 2008, through June 6, 2008, InFocus paid the newspaper in the area, Ravalli Republic, \$4,206.00 for the 14 newspaper advertisements addressing the adoption of zoning and streamside setbacks as well as other votes made by the commissioners.

The ads published in the Ravalli Republic newspaper were at the express direction of InFocus, not at the request of InFocus on behalf of a client.

InFocus responded to the County Commissioner's straw poll authorization by placing two ads on May 20 and June 2, 2008, specifically advocating voters in the Darby area to vote a particular way, i.e., against zoning, in the straw poll.

The May 20, 2008, and June 2, 2008, advertisements advocated the success or defeat of a ballot issue. True copies of each of the May 20, 2008, and June 2, 2008 advertisements are attached hereto as **Exhibits 1 and 2**, respectively.

Both the May 20, 2008, and June 2, 2008 ads bear the tag line, "Paid for by InFocus, Inc., P. O. Box 964, Hamilton, MT 59840."

After the two above referenced newspaper advertisements were published, a Ravalli County resident contacted the Commissioner of Political Practices Office with regard to such advertisements.

After obtaining copies of these advertisements, Mary Baker, Program Supervisor for this agency, contacted InFocus. Ms. Baker advised Chris Daniel that InFocus needed to register with the Commissioner of Political Practices and bringing representatives of InFocus' attention to MCA 35 and 37.

Mr. Daniel admitted to Ms. Baker that InFocus had made a mistake. Daniel and Arnold maintained throughout the investigation that they independently chose to advocate against the ballot issue; no request ever came from their clients for that strategy.

Daniel and Arnold of InFocus denied involvement with placing the anonymous signs around the Darby area, and stated anything they put out for public consumption contained their name and address.

InFocus did not publish further advocacy pieces – nor did they register as advised by Program Supervisor Baker.

In May 2008 complainant Essen contacted Mary Baker. Baker advised Essen she had contacted InFocus and advised them of the need to register with this office.

On June 3, 2008, Darby, Montana, held a Ballot Issue advisory vote for the Darby School district asking voters if they wanted the county to continue to consider baseline zoning in the Darby School District.

On or about August 6, 2008, a petition was approved by the Ravalli County Clerk and Recorder, which placed a referendum on the November 4, 2009 ballot to repeal the growth policy. The effect of the referendum, if approved by voters, would be to end work on projects authorized under the approved growth policy, including drafting of general zoning and streamside setback regulations.

In October of 2008, due to a downturn in the economy, Daniel and Arnold decided to close InFocus' business.

STATEMENT OF FINDINGS

Essen alleges violations of §13-27-409, MCA. This office does not have jurisdiction over matters contained in this section, and therefore will not comment on allegations of infraction thereof. Essen further alleges violations of the following sections of MCA:

- §13-37-201, requiring the appointment and certification of a treasurer to a political committee, and registration of an organizational statement within 5 days of making an expenditure;
- §13-37-210(1)(a)(i) & (ii), requiring that any political committee...shall name and identify itself...using a name or phrase that clearly identifies the economic or special interest or a majority of its contributors, or that identifies the employer, if a majority of its contributors share a common employer;
- §13-35-227(1) & (2), prohibiting contributions from corporations to political committees;
- §13-35-225, requiring identifying statements on election materials, requiring the person financing the communication to bring the material into compliance with the law and withdraw it from circulation; and
- §13-35-218, prohibiting coercion or undue influence of voters.

Pursuant to 44.10.327(2)(c), Admin. R. Mont., an incidental committee is a political committee which is not organized or maintained for the primary purpose of influencing elections but which may incidentally become a political committee by reason of making a contribution or expenditure to support or oppose a candidate and/or issue. InFocus was acting as an incidental committee, as their primary organizational function was not to support or oppose a candidate or ballot issue, but rather to function as a public relations corporation. (Fact 1, 2 & 8.) InFocus became involved in the ballot issue by purchasing two advertisements advocating for the defeat

of said ballot issue (Fact 18). Not only was the ballot issue work secondary to the organizational function of InFocus, it was never planned or directed by the clients of InFocus (Fact 12, 18 and 21). Therefore, InFocus is not subject to the requirements of §13-37-210, MCA.

Furthermore, InFocus is not subject to the requirements of §13-37-227, MCA, prohibiting corporate contributions, as the money paid to InFocus was that of a client to a vendor, rather than a contributor to a committee. (Fact 6, 8, 20 and 21.)

Section 13-37-218, MCA, does not apply to the instant case as it prohibits coercion or undue influence of voters. The statute refers to threats of "force, coercion, violence, restraint...temporal or spiritual injury, damage, harm..." It goes on to prohibit, "by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or compel, induce, or prevail upon any elector to give or to refrain from giving the elector's vote at any election." Nowhere is a newspaper advertisement included in examples of coercion. The closest the section comes to applying to the instant case is in subsection (2), which states "A person who is...an officer of any corporation or organization, religious or otherwise, may not, *other than by public speech or print*, urge, persuade, or command any voter to vote or refrain from voting for or against any...ballot issue submitted to the people because of the ... interest of any corporation..." (emphasis added) The newspaper advertisement is a clear example of public speech, and therefore §13-37-218, MCA, does not apply to the actions taken by InFocus.

InFocus, as an incidental committee, is subject to the requirements of §13-37-201, MCA, certification with this office, and subsequently all reporting requirements applicable thereto. InFocus has admitted their failure to register and report as an incidental committee.

CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings there is evidence to conclude that InFocus violated Montana campaign financial reporting and disclosure laws, and that a civil penalty action under § 13-37-128, MCA is warranted.

DATED this 13th day of June, 2011.



David B. Gallik
Commissioner of Political Practices

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ZONING VICTIMS

PHOTO BY JEFFREY M. HARRIS FOR THE AVALL REPUBLIC



WARY BOUGHT RETIREMENT LAND

EXHIBIT 1



GREG'S FAMILY RESIDED IN HAMILTON, VT

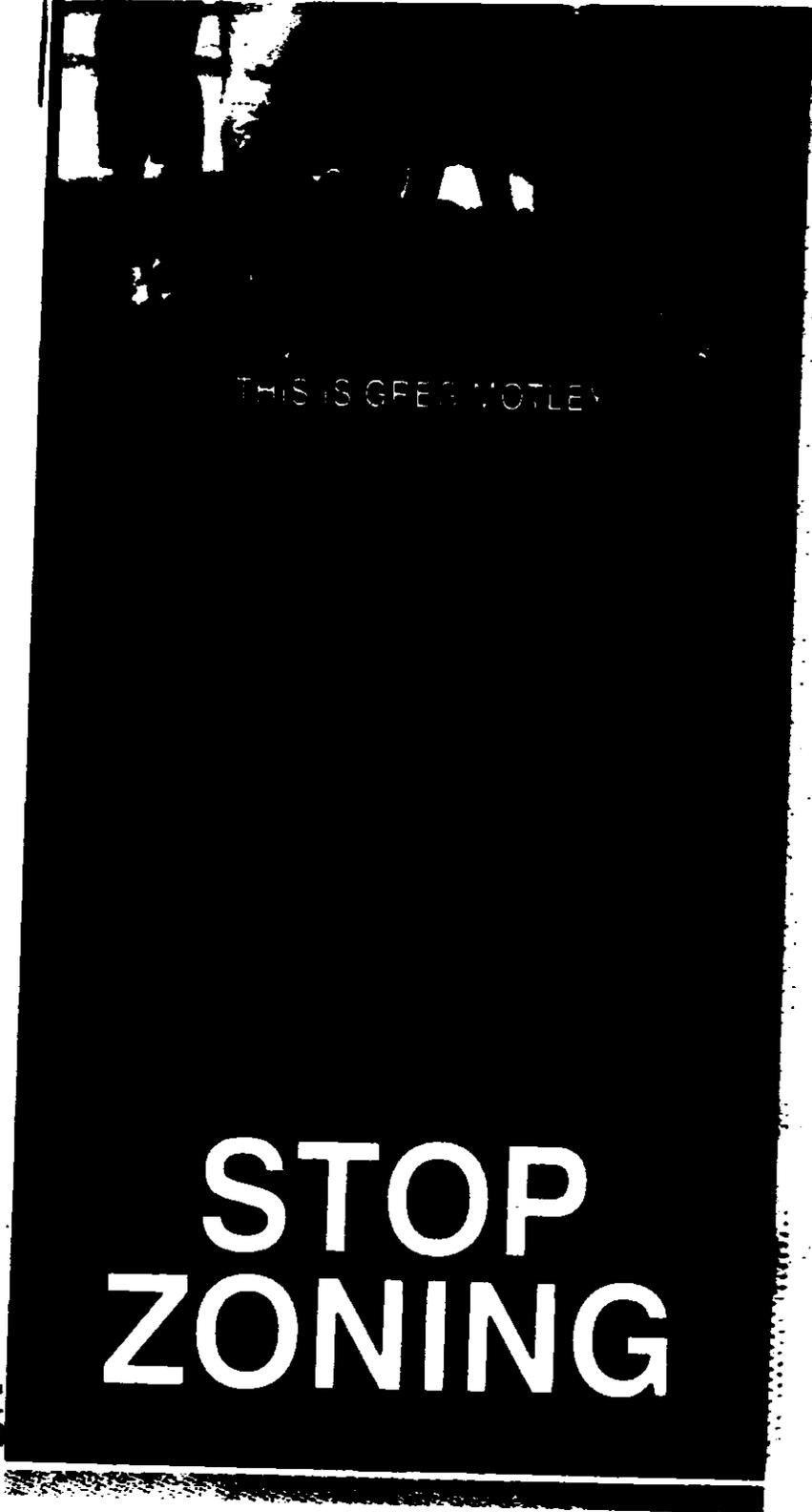
STOP ZONING NOW.
Darby, vote **NO ZONING**
on June 3rd

ZONING VICTIMS



MARY BOUGHT RETIREMENT LAND

EXHIBIT 2



THIS IS GREG MOTLEY

**STOP
ZONING**